

THE HONORABLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

MEGHAN COTTON, Individually and on Behalf of All Others Similarly Situated,

NO. 2:22-cv-432

**ORIGINAL COMPLAINT—
COLLECTIVE ACTION**

MRAE, LLC, MICHELLE EBERT and
FRANK COLACURCIO, JR.,

Defendant.

Plaintiff Meghan Cotton (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her attorney April Rhéaume of Sanford Law Firm, PLLC, for her Original Complaint—Collective Action (“Complaint”) against Defendants MRAE, LLC, Michelle Ebert and Frank Colacurcio, Jr. (collectively “Defendants” or “Defendant”), states and alleges as follows:

I. PRELIMINARY STATEMENTS

1. This is a collective action brought by Plaintiff, individually and on behalf of all others similarly situated, against Defendant for violations of the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA”), and the provisions of the

1 Washington Minimum Wage Act, RCW 49.46.010, *et seq.*, and Washington Rebate Act, RCW
2 49.52.050 (collectively, the “Washington Acts”).

3 2. Plaintiff seeks a declaratory judgment, monetary damages, liquidated damages,
4 prejudgment interest, and a reasonable attorney's fee and costs as a result of Defendant's policy
5 and practice of failing to pay proper overtime compensation under the FLSA and the
6 Washington Acts.

II. JURISDICTION AND VENUE

9 3. The United States District Court for the Western District of Washington has
10 subject matter jurisdiction over this suit under the provisions of 28 U.S.C. § 1331 because this
11 suit raises federal questions under the FLSA.

12 4. This Complaint also alleges violations of the Washington Acts, which arise out
13 of the same set of operative facts as the federal cause of action; accordingly, this Court has
14 supplemental jurisdiction over Plaintiff's Washington state law claims pursuant to 28 U.S.C. §
15 1367(a).

17 5. Plaintiff was employed by and performed work for Defendant in King County.
18 Therefore, venue is proper within the Seattle Division of the Western District of Washington
19 pursuant to 28 U.S.C. § 1391.

III. THE PARTIES

6. Plaintiff is an individual and resident of King County.

7. Separate Defendant MRAE, LLC (“MRAE”), is a domestic limited liability company.

25 8. MRAE's registered agent for service of process is Phil Tavel, at 10019 33rd
26 Avenue SW, Seattle, Washington 98146.

1 9. MRAE does business as Kittens Cabaret.

2 10. Separate Defendant Michelle Ebert (“Ebert”) is an individual and resident of
3 Washington.

4 11. Separate Defendant Frank Colacurcio, Jr. (“Colacurcio”), is an individual and
5 resident of Washington.

6 12. Colacurcio does business as Talents West.

7 **IV. FACTUAL ALLEGATIONS**

8 13. Plaintiff repeats and realleges all the preceding paragraphs of this Complaint as
9 if fully set forth in this section.

10 14. Ebert is a principal, director, officer, and/or owner MRAE.

11 15. Ebert, in her role as an operating employer of MRAE, had the power to hire and
12 fire Plaintiff, often exercised supervisory authority over Plaintiff’s work, including the day-to-
13 day job duties that Plaintiff’s job entailed, determined her work schedule, and made decisions
14 regarding Plaintiff’s pay, or lack thereof.

15 16. Ebert took an active role in operating MRAE and in the management thereof.

16 17. Upon information and belief, Colacurcio operates Talents West as a business
17 even though Talents West is not registered with the Washington Secretary of State.

18 18. Colacurcio, doing business as Talents West, works with MRAE in assisting with
19 hiring, firing and discipline of MRAE’s employees.

20 19. Colacurcio exercised supervisory authority over Plaintiff’s work, including
21 Plaintiff’s day-to-day employment conditions, had the power to hire, fire and discipline
22 Plaintiff, and made decisions regarding Plaintiff’s pay, or lack thereof.

1 20. Defendant employs two or more individuals who engage in interstate commerce
2 or business transactions, or who produce goods to be transported or sold in interstate commerce,
3 or who handle, sell, or otherwise work with goods or materials that have been moved in or
4 produced for interstate commerce.

5 21. Defendant's annual gross volume of sales made or business done is not less than
6 \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated) in each of
7 the three years preceding the filing of the Original Complaint.

8 22. At all times material herein, Plaintiff has been entitled to the rights, protections,
9 and benefits provided under the FLSA and the Washington Statutes.

10 23. Defendant employed Plaintiff as a Dancer from 2003 until March of 2020.

11 24. Defendant classified Plaintiff as an independent contractor, exempt from the
12 overtime requirements of the FLSA.

13 25. Defendant also employed other Dancers.

14 26. Defendant also classified other Dancers as independent contractors.

15 27. Plaintiff performed stage dances and lap dances on Defendant's premises.

16 28. Other Dancers had the same or similar duties as Plaintiffs.

17 29. Defendant directly hired Plaintiff and other Dancers, controlled their work
18 schedules, duties, protocols, applications, assignments and employment conditions, and kept at
19 least some records regarding their employment.

20 30. Plaintiffs and other Dancers did not financially invest in Defendants' clubs.

21 31. Defendants owned the clubs at which Plaintiffs and other Dancers performed.

22 32. Plaintiff and other Dancers did not share in Defendants' profits or losses.

1 33. Defendants, not Plaintiff or other Dancers, set prices for lap dances and private
2 dances.

3 34. Defendant determined Plaintiff's and other Dancers' pay scale for services
4 without input from or negotiation with Plaintiff and other Dancers.

5 35. Defendant, not Plaintiff or other Dancers, decided whether and how many
6 Dancers to hire.

7 36. Plaintiff and other Dancers did not select any employees for hire, nor did they
8 have any ability to fire employees.

9 37. Plaintiff and other Dancers did not have any control of or authority over any
10 employee's rate of pay or working hours.

11 38. Defendants set policies and rules and had complete control over the venue.

12 39. Defendants required Plaintiff and other Dancers to follow Club policies and
13 rules.

14 40. Defendants made decisions regarding advertising without Plaintiff's and other
15 Dancers' input.

16 41. Defendant failed to pay Plaintiff and other Dancers the applicable minimum
17 wage for hours worked up to 40 each week, and failed to pay Plaintiff and other Dancers 1.5x
18 their base hourly rate for each hour worked over 40 each week.

19 42. Upon information and belief, Defendant did not pay Plaintiff and other Dancers
20 an hourly or salary rate.

21 43. Plaintiff and other Dancers received tips from Defendant's customers.

22
23
24
25
26

1 44. Plaintiff and other Dancers were required to share their tips with Defendant,
2 managers and other employees who did not “customarily and regularly receive tips” within the
3 meaning of 29 U.S.C. § 203(m).

4 45. Defendant required Plaintiff and other Dancers to “rent” space to dance.

5 46. If Plaintiff or other Dancers left the club even for just a few minutes, they were
6 required to pay a re-entry rental fee.

7 47. Defendant occasionally double-charged Plaintiff and other Dancers for rent.

8 48. Plaintiff sometimes did not make enough in tips to cover Defendant’s rental fee.

9 49. The tips Plaintiff and other Dancers were allowed to keep constituted the entirety
10 of their pay.

11 50. Plaintiff occasionally worked over 40 hours in a week for Defendant.

12 51. Upon information and belief, other Dancers regularly or occasionally worked
13 over 40 hours per week for Defendant.

14 52. At all relevant times, Defendant knew or should have known that the FLSA
15 applied to the operation of an adult entertainment club. Defendant knew of or should have been
16 aware of previous litigation and enforcement actions relating to wage and hour violations where
17 the misclassification of dancers as independent contractors under the FLSA was challenged.

18 53. Plaintiff and other Dancers are entitled to wages and compensation based on the
19 standard minimum wage for all hours worked.

20 54. Upon information and belief, the pay practices that violate the FLSA alleged
21 herein were the same at all of Defendant’s facilities because the policy was a centralized human
22 resources policy implemented uniformly from the corporate headquarters.

23
24
25
26

1 55. Defendant did not provide Plaintiff with rest breaks as required by the
 2 Washington Statutes.

3 56. Defendant did not provide Plaintiff with thirty-minute lunch breaks as required
 4 by the Washington Statutes.

5 57. Defendants knew, or showed reckless disregard for whether, the way they paid
 6 Plaintiff and other Dancers violated the FLSA and the Washington Acts.
 7

V. REPRESENTATIVE ACTION ALLEGATIONS

8 58. Plaintiff repeats and realleges all previous paragraphs of this Complaint as
 9 though fully incorporated in this section.

10 59. Plaintiff brings this claim for relief for violation of the FLSA as a collective
 11 action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons
 12 similarly situated who were, are, or will be employed by Defendant within the applicable statute
 13 of limitations period, who are entitled to payment of the following types of damages:
 14

15 A. Regular wages and overtime premiums for all hours worked over forty hours in
 16 any week;

17 B. Liquidated damages; and

18 C. Attorney's fees and costs.

19 60. Plaintiff proposes the following collective under the FLSA:

All Dancers within the past three years.

20 61. In conformity with the requirements of FLSA Section 16(b), Plaintiff has filed
 21 or will soon file a written Consent to Join this lawsuit.
 22

1 62. The relevant time period dates back three years from the date on which
2 Plaintiff's Original Complaint—Collective Action was filed herein and continues forward
3 through the date of judgment pursuant to 29 U.S.C. § 255(a), except as set forth herein below.

4 63. The members of the proposed FLSA collective are similarly situated in that they
5 share these traits:

- A. They were paid in tips;
- B. They were subject to Defendant's common policy of classifying them as "independent contractors;"
- C. They were not paid a sufficient minimum wage or overtime premium;
- D. They had the same or substantially similar job duties and requirements; and
- E. They were subject to numerous other policies and practices as described above.

64. Plaintiff is unable to state the exact number of the collective but believes that the collective exceeds two hundred (200) persons.

65. Defendant can readily identify the members of the collective, who are a certain portion of the current and former employees of Defendant.

66. The names and physical and mailing addresses of the probable FLSA collective action plaintiffs are available from Defendant.

67. The email addresses of many of the probable FLSA collective action plaintiffs are available from Defendant.

**VI. FIRST CLAIM FOR RELIEF
(Individual Claim for Violation of the FLSA)**

68. Plaintiff repeats and realleges all previous paragraphs of this Complaint as though fully set forth herein.

1 69. Plaintiff asserts this claim for damages and declaratory relief pursuant to the
2 FLSA, 29 U.S.C. § 201, *et seq.*

3 70. At all relevant times, Defendant has been, and continues to be, an enterprise
4 engaged in commerce within the meaning of the FLSA, 29 U.S.C. § 203.

5 71. 29 U.S.C. §§ 206 and 207 require any enterprise engaged in commerce to pay a
6 minimum wage for all hours worked up to 40 each week and to pay 1.5 times their regular
7 wages for all hours worked over 40, unless an employee meets certain exemption requirements
8 of 29 U.S.C. § 213 and all accompanying DOL regulations.

9 72. Defendant misclassified Plaintiff as exempt from the requirements of the
10 FLSA.

11 73. Despite Plaintiff's entitlement to overtime payments under the FLSA, Defendant
12 failed to pay Plaintiff 1.5 times her regular rate for all hours worked in excess of 40 per week.

13 74. Defendant failed to pay Plaintiff a lawful minimum wage.

14 75. Defendant knew or should have known that its actions violated the FLSA.

15 76. Defendant's conduct and practices, as described above, were willful.

16 77. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for
17 monetary damages, liquidated damages and costs, including reasonable attorney's fees provided
18 by the FLSA for all violations which occurred beginning at least three years preceding the filing
19 of Plaintiff's initial complaint, plus periods of equitable tolling.

20 78. Defendant has not acted in good faith nor with reasonable grounds to believe its
21 actions and omissions were not a violation of the FLSA, and, as a result thereof, Plaintiff is
22 entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid
23
24
25
26

overtime premium pay described above pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b).

79. Alternatively, should the Court find that Defendant acted in good faith in failing to pay Plaintiff as provided by the FLSA, Plaintiff is entitled to an award of prejudgment interest at the applicable legal rate.

**VII. SECOND CLAIM FOR RELIEF
(Collective Action Claim for Violation of the FLSA)**

80. Plaintiff repeats and realleges all previous paragraphs of this Complaint as though fully set forth herein.

81. Plaintiff asserts this claim for damages and declaratory relief on behalf of all similarly situated employees pursuant to the FLSA, 29 U.S.C. § 201, *et seq.*

82. At all relevant times, Defendant has been, and continues to be, an enterprise engaged in commerce within the meaning of the FLSA, 29 U.S.C. § 203.

83. 29 U.S.C. §§ 206 and 207 require any enterprise engaged in commerce to pay all employees a minimum wage for all hours worked up to 40 each week and to pay 1.5 times their regular wages for all hours worked over 40 each week, unless an employee meets certain exemption requirements of 29 U.S.C. § 213 and all accompanying Department of Labor regulations.

84. Defendant classified Plaintiff and other similarly situated employees as nonexempt from the overtime provisions of the FLSA.

85. Defendant failed to pay Plaintiff and similarly situated employees 1.5 times their regular rate for all hours worked in excess of 40 per week.

86. Defendant failed to pay Plaintiff and similarly situated employees a lawful minimum wage.

87. Defendant deprived Plaintiff and similarly situated employees of compensation for all of the hours worked over forty per week, in violation of the FLSA.

88. Defendant knew or should have known that its actions violated the FLSA.

89. Defendant's conduct and practices, as described above, were willful.

90. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff and all similarly situated employees for monetary damages, liquidated damages and costs, including reasonable attorney's fees provided by the FLSA for all violations which occurred beginning at least three years preceding the filing of Plaintiff's initial complaint, plus periods of equitable tolling.

91. Defendant has not acted in good faith nor with reasonable grounds to believe its actions and omissions were not a violation of the FLSA, and, as a result thereof, Plaintiff and similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime premium pay described above pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b).

92. Alternatively, should the Court find that Defendant acted in good faith in failing to pay Plaintiff and the collective members as provided by the FLSA, they are entitled to an award of prejudgment interest at the applicable legal rate.

VIII. THIRD CLAIM FOR RELIEF (Individual Claim for Violation of the Washington Acts)

93. Plaintiff repeats and realleges all previous paragraphs of this Complaint as though fully set forth herein.

94. The Washington Minimum Wage Act (“MWA”), provides that all nonexempt employees are required to be paid at or above the applicable minimum wage rate for all hours worked. RCW 49.46.020.

1 95. All hours worked over 40 in a workweek must be paid at 1.5 times the
 2 nonexempt employee's regular rate of pay. *See RCW 49.46.130(1).*

3 96. "No employee shall be required to work more than five consecutive hours
 4 without a meal period." WAC 296-126-092(2). A violation of the meal period requirement is "a
 5 wage violation." *Hill v. Garda CL Nw., Inc.*, 198 Wn. App. 326, 360-61 (2017). Similarly, an
 6 employee must be provided with ten-minute paid rest break for every four hours worked and
 7 must not work more than three consecutive hours without a rest break. WAC 296-126-092(4).
 8 A denial of compliant rest breaks is also a wage violation. *Wingert v. Yellow Freight Sys., Inc.*,
 9 146 Wn.2d 841 (2002).

10 97. The meal break may be unpaid if the worker receives an uninterrupted meal
 11 period of at least 30 minutes during which they are completely relieved of work duties.
 12 However, if the employer intrudes upon or infringes the mandatory thirty-minute term to any
 13 extent, workers are owed compensation for the full thirty-minute period. *Alvarez v. IBP, Inc.*,
 14 339 F.3d 894, 913-914 (9th Cir. 2003); L&I Admin. Policy ES.C.6.1 at 3-4.

15 98. The Washington Wage Rebate Act, Wash. Rev. Code § 49.52.050, provides in
 16 relevant part that any employer who "willfully and with intent to deprive the employee of any
 17 part of his wage, shall pay any employee a lower wage than such employer is obligated to pay
 18 such employee by any statute, ordinance or contract" shall be guilty of a misdemeanor. There
 19 is a presumption that any underpayment of an employee's wages was willful. Wash. Rev. Code
 20 § 49.52.080.

21 99. Wash. Rev. Code § 49.52.070 provides that any employer who violates the
 22 provisions of Wash. Rev. Code § 49.52.050 shall be liable in a civil action for twice the amount
 23 of wages withheld, and attorneys' fees and costs

100. The Wage Rebate Act entitles an employee to recover “twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with the costs of suit and a reasonable sum for attorney’s fees.” RCW 49.52.070.

101. Defendant acted willfully in violating the Washington state laws discussed herein and Plaintiff is entitled to double the actual damages. RCW 49.52.070.

102. In failing to compensate Plaintiff at 1.5 times her regular rate for all hours worked over 40 each week, Defendant violated the Washington state laws referenced above.

103. In failing to provide Plaintiff with lunch breaks and rest breaks, Defendant violated the Washington state laws referenced above.

104. Plaintiff has and will continue to suffer loss of income and other damages.
Accordingly, Plaintiff is entitled to recover unpaid wages owed, liquidated damages, attorneys' fees and other appropriate relief under Washington state laws.

IX. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff Meghan Cotton, individually and on behalf of all others similarly situated, respectfully prays that each Defendant be summoned to appear and to answer this Complaint and for declaratory relief and damages as follows:

A. Declaratory judgment that Defendant's practices alleged in this Complaint violate the FLSA, the Washington Acts and their related regulations;

B. Certification of a collective under Section 216 of the FLSA of all individuals similarly situated, as further defined in any motion for the same;

C. Judgment for damages suffered by Plaintiff and others similarly situated for all unpaid wages under the FLSA, the Washington Acts and their related regulations;

D. Judgment for liquidated damages owed to Plaintiff and all others similarly situated pursuant to the FLSA, the Washington Acts and their related regulations;

E. An order directing Defendant to pay Plaintiff and all others similarly situated interest, a reasonable attorney's fee and all costs connected with this action; and Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

**MEGHAN COTTON, Individually
and on Behalf of All Others
Similarly Situated, PLAINTIFF**

SANFORD LAW FIRM, PLLC
Kirkpatrick Plaza
10800 Financial Centre Pkwy, Suite 510
Little Rock, Arkansas 72211
Telephone: (800) 615-4946
Facsimile: (888) 787-2040

April Rhéaume
Wash. Bar No. 57119
april@sanfordlawfirm.com